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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7786 of 1988

with

SPECIAL CIVIL APPLICATION No 8339 ,8340,8342 and 8343 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MASTER SILK MILLS PVT LTD

Versus

IBRAHIM HABIB

Appearance:

MR KS NANAVATI for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/1999

ORAL JUDGEMENT

Learned advocate Mr. Vimal Patel appears for Mr. K.S. Nanavaty,advocate for the petitioner Co. In this petition, this Court has issued rule on 16th December, 1988. While issuing rule, this Court granted interim stay against the order passed by the labour court, Rajkot on 29th November, 1986. The rule has been served upon the respondents but none has appeared for the respondents.

2. In the present petition, the orders passed by the Labour Court Rajkot in Recovery Application No. 1167 of 1980, 1176 of 1980, 1177 of 1980 and 1187 of 1980 have been challenged by the petitioner Mill Co. Said recovery applications were filed by the applicants workmen under section 33(C)(2) of the Industrial Disputes Act, 1947 ("the ID Act" for short). It was the case of the applicants before the labour court that the applicants were working in the opponent mills CO. and on 5thOctober,1976, the settlement was arrived at between the Textile Labour Association which was the representative union for the Silk Industry in Bhavnagar local area. Subsequently, another settlement was arrived at between the Master Silk Mills Kamdar Mandal which was the representative union and the opponent Mills Co. According to the said settlement, if any workman tenders his resignation through the union, said workman was to be paid the retrenchment compensation and gratuity and the union should agree to allow the opponent Mill Co. to allot to the workman 4 looms. According to the applicants, the applicants tendered their resignation and, therefore, they are entitled to the retrenchment compensation and gratuity but the opponent mill Co. has not paid the same and, therefore, the applicants had filed the recovery application claiming the amounts of gratuity and retrenchment compensation. Before the labour Court, the opponent Mill Co. filed the written statement and raised the contention that the labour Court has no jurisdiction to hear and decide the said application. Even on merits, it is denied that the applicants worked for a period as alleged and further contended that the opponent has not allotted the work to the workman of four looms and that the applicants are not entitled to the retrenchment compensation and gratuity. During the pendency of the said recovery applications, the parties have not led any oral evidence and the matters were adjourned from time to time to enabling the parties to arrive at some settlement but the settlement was not possible and the labour Court, Rajkot has, ultimately, passed the order below Exh. 9 after hearing both the sides and determined the amounts due to the respective workmen. Said order of the labour Court was

challenged by the opponent Mills Co. before this Court by filing writ petition and this Court had remanded the matter back to the labour Court with a direction to hear the parties on the basis of the documents already on record. Said matters were, thus, remanded on the representation of the representative of the applicants with a direction to pass reasoned and speaking orders after hearing the parties.

Before the labour Court, the petitioner Mill Co. raised two preliminary contentions/objections. One was with regard to period of limitation and the another was that the amount of gratuity cannot be ordered to be paid under the provisions of section 33(C)2 of the ID Act.

As regards the first preliminary contention, after hearing the parties, the labour court has come to the conclusion that the aforesaid recovery applications are clearly barred by limitation. Said order passed by the labour Court Rajkot was not challenged by the respondents workmen whose applications were rejected by the labour court on the ground of limitation. The labour Court has come to the conclusion that the rest of the recovery applications are within the period of limitation as the petitioner company had made payments to the respondents even during the pendency of the recovery applications. Therefore, rest of the applications were held to have been filed within the prescribed period of limitation preceding the date of filing of the applications.

According to my view, considering two decisions of the apex Court in the matter of The Central Bank of India v. P.S Rajagopalan [AIR 1964 SC 743] and The Bombay Gas Company Limited v. Gopal Bhiva & Ors. [AIR 1964 SC 752], it has been held by the apex court that it is true that the industrial adjudication should not encourage unduly belated claims but on the other hand, no limitation is prescribed for an application under section 33C(2) of the ID Act. Therefore, the apex Court has set aside the order passed by the labour Court and remanded the proceedings to the labour court for direction that it should allow the parties to amend their pleadings, if they so desire and lead the evidence in respect of their respective cases. The apex court has also held that where the legislature has made no provisions for limitation, it would not be open to the Courts to introduce any such limitation on the grounds of fairness or justice. The words of section 33C(2) of the ID Act are plain and unambiguous and it would be the duty of the Court to give effect to the said provisions without any

consideration of limitation. No doubt, such belated claims made on the large scale may cause considerable inconvenience to the employer but that is the consideration which the legislature may take into account and if the legislature feels that the fair play and justice require that some limitation should be prescribed, it may proceed to do so. In absence of any such provision, the labour court cannot have any such consideration while dealing with the application under section 33(C)(2) of the ID Act. This Court, following the principles laid down by the apex Court in the aforesaid decision, held that the failure of the legislature to make any provisions for limitation cannot be deemed to be an accidental omission [1998 (2) GLH pg.996, in case of GSRTC versus Keshavlal Maneklal Shah]. In the circumstances, it would be legitimate to infer that the legislature has deliberately not provided for any limitation under section 33(C)(2) of the ID Act. In view of this settled legal position in respect of the contention of limitation which was raised by the petitioner before the labour court and which was considered and accepted by the labour court cannot be said to be in consonance with the provisions of law. However, since the order of rejection of the respective recovery applications passed by the labour court has not been challenged by the respondents concerned, there is no need to further go into that question by this Court.

The above observation in respect of the contention of limitation regarding section 33(C)(2) of the ID Act is the emphasis and clarification regarding settled legal position while considering the decision of the apex Court.

The labour Court has also decided the another contention in respect of the demand of gratuity Before the labour Court, contention was raised by the petitioner that the claim of gratuity cannot be entertained by the labour court while exercising the powers under section 33(C)(2) of the ID Act on the basis of the decision of the apex Court in case of State of Punjab versus Labour Court, Jullander, reported in 1980 (1) LLN pg. 39. The labour Court has come to the conclusion that the labour court will not have jurisdiction to award the gratuity under the law settled and claim of gratuity cannot be heard by this court but this court can determine the amount of retrenchment compensation. Considering this conclusion of the labour Court, in light of the settlement which was arrived at between the petitioner Co. and the Master Silk Mills Kamdar Mandal dated 30th April, 1978, in this settlement, it was agreed between

the parties that if any employee tenders his resignation through union, he would be entitled to the retrenchment compensation and the amount of gratuity under the provisions of the Payment of Gratuity Act, 1972. Therefore, the amount of gratuity has been determined and the right also has been made clear that the same shall be recoverable being the conditions of the settlement dated 30th April, 1978. The claim of payment of gratuity, in this matter, is based on the settlement dated 30th April, 1978 and not on the provisions of the Payment of Gratuity Act.The decision of the apex Court in case of State of Punjab versus Labour court, Jullander, reported in AIR 1979 SC 1981, has been considered by this Court in the decision in the matter of G.S.R.T.C v. Karsan Meghji Desai, reported in 1997 (2) GLR pg. 1376. The view which has been expressed and the conclusions of the labour Court, Rajkot in respect of not entertaining the recovery application for claiming benefit of gratuity, according to me, is not correct since the claim of gratuity is based on the settlement arrived at between the union and the petitioner Company. However, since the respondent has not challenged the said award, there is no need to enter into and decide that controversy in this petition.

The labour court has considered the question of retrenchment compensation because the resignations were tendered by the respondents in pursuance of the settlement dated 30th April, 1978 arrived at between the union and the petitioner Co. Before the labour court, the petitioner Co. has not shown that it has not run four looms per worker and the petitioner Co.has not led any evidence whatsoever to show that the applicants have not resigned in pursuance to the said settlement. These were the findings of fact and not proved by the petitioner CO. before the labour Court by producing documentary evidence as well as by leading the oral evidence. Therefore, the labour court has recorded the conclusion that the respondents are entitled to claim the retrenchment compensation which remained outstanding. According to my view, said conclusions of the labour Court directing the petitioner Co. to pay to the respondents an amount of retrenchment compensation are legal and valid conclusions. These findings were given by the labour Court on the basis of the evidence on record. The petitioner Co. has failed to prove the case before the labour court by producing documentary evidence and leading oral evidence that the petitioner Co. has not run four looms per worker and the respondents have not resigned in pursuance of the settlement dated 30th April, 1978. Therefore, there is no error committed by

the labour court while passing the order directing topay the amount which has been determined by the labour court under section 33(C)(2) of the ID Act.

According to this court, small amounts are due and being the old matter of 1988, while admitting these matters, this court has granted interim stay against the order of recovery dated 29th November, 1986. In view of these peculiar facts and circumstances, in the larger interest of justice, petitioner Co. is required to be directed to pay the said amounts which has been ordered to be paid by the labour Court Rajkot in its order dated 29th November, 1986 to the said respondents, if not paid so far.

I have considered the submissions made by the learned advocate for the petitioner CO. I am unable to accept the same in respect of the finding given by the labour court that the petitioner co. has not proved the evidence before the labour court by leading oral evidence as well as by documentary evidence. There is, therefore, no infirmity in the order passed by the labour Court and,therefore, these petitions are required to be dismissed.

Hence the petitions are ordered to be dismissed. Rule is discharged. Interim relief, if any, shall stand vacated in each of these petitions. There shall be no order as to costs. The petitioner Co. is directed to pay the said amounts which has been ordered by the labour court Rajkot in its order dated 29th November, 1988 to the respondents, if not paid so far, within a period of three months from the date of receipt of the certified copy of this order.

24.9.1998. (H.K.Rathod,J.)

Vyas